

106TH CONGRESS  
1ST SESSION

# S. 1739

To impose a moratorium on large agribusiness mergers and to establish a commission to review large agriculture mergers, concentration, and market power.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 15, 1999

Mr. WELLSTONE (for himself, Mr. DORGAN, Mr. DASCHLE, Mr. FEINGOLD, Mr. HARKIN, Mr. JOHNSON, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To impose a moratorium on large agribusiness mergers and to establish a commission to review large agriculture mergers, concentration, and market power.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Agribusiness Merger  
5 Moratorium and Antitrust Review Act of 1999”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Concentration in the agricultural economy  
9 including mergers, acquisitions, and other combina-

1        tions and alliances among suppliers, producers,  
2        packers, other food processors, and distributors has  
3        been accelerating at a rapid pace in the 1990's.

4            (2) The trend toward greater concentration in  
5        agriculture has important and far-reaching implica-  
6        tions not only for family-based farmers, but also for  
7        the food we eat, the communities we live in, and the  
8        integrity of the natural environment upon which we  
9        all depend.

10           (3) In the past decade and a half, the top 4  
11        largest pork packers have seized control of some 57  
12        percent of the market, up from 36 percent. Over the  
13        same period, the top 4 beef packers have expanded  
14        their market share from 32 percent to 80 percent,  
15        the top 4 flour millers have increased their market  
16        share from 40 percent to 62 percent, and the market  
17        share of the top 4 soybean crushers has jumped  
18        from 54 percent to 80 percent.

19           (4) Today the top 4 sheep, poultry, wet corn,  
20        and dry corn processors now control 73 percent, 55  
21        percent, 74 percent, and 57 percent of the market,  
22        respectively.

23           (5) A handful of firms dominate the processing  
24        of every major commodity. Many of them are  
25        vertically integrated, which means that they control

1 successive stages of the food chain, from inputs to  
2 production to distribution.

3 (6) Growing concentration of the agricultural  
4 sector has restricted choices for farmers trying to  
5 sell their products. As the bargaining power of agri-  
6 business firms over farmers increases, agricultural  
7 commodity markets are becoming stacked against  
8 the farmer.

9 (7) The farmer's share of every retail dollar has  
10 plummeted from around 50 percent in 1952, to less  
11 than 25 percent today, while the profit share for  
12 farm input, marketing, and processing companies  
13 has risen.

14 (8) While agribusiness conglomerates are post-  
15 ing record earnings, farmers are facing desperate  
16 times. The commodity price index is the lowest since  
17 1987. Hog prices are at their lowest since 1972.  
18 Cotton and soybean prices are the lowest they have  
19 been since the early 1970's.

20 (9) The benefits of low commodity prices are  
21 not being passed on to American consumers. The  
22 gap between what shoppers pay for food and what  
23 farmers are paid is growing wider. From 1984 to  
24 1998, prices paid to farmers fell 36 percent, while

1 consumer food prices actually increased by 3 per-  
2 cent.

3 (10) Concentration, low prices, anticompetitive  
4 practices, and other manipulations and abuses of the  
5 agricultural economy are driving family-based farm-  
6 ers out of business. Farmers are going bankrupt or  
7 giving up, and few are taking their places; more  
8 farm families are having to rely on other jobs to stay  
9 afloat; and the number of farmers leaving the land  
10 will continue to increase unless and until these  
11 trends are reversed.

12 (11) The decline of family-based agriculture un-  
13 dermines the economies of rural communities across  
14 America; it has pushed Main Street businesses, from  
15 equipment suppliers to insurance sales people, out of  
16 business or to the brink of insolvency.

17 (12) Increased concentration in the agribusiness  
18 sector has a harmful effect on the environment; cor-  
19 porate hog farming, for example, threatens the in-  
20 tegrity of local water supplies and creates noxious  
21 odors in neighboring communities. Concentration  
22 also can increase the risks to food safety and limit  
23 the biodiversity of plants and animals.

24 (13) The decline of family-based farming poses  
25 a direct threat to American families and family val-

1       ues, by subjecting farm families to turmoil and  
2       stress.

3           (14) The decline of family-based farming causes  
4       the demise of rural communities, as stores lose cus-  
5       tomers, churches lose congregations, schools and  
6       clinics become under-used, career opportunities for  
7       young people dry up, and local inequalities of wealth  
8       and income grow wider.

9           (15) These developments are not the result of  
10      inevitable market forces. Its problems arise rather  
11      from policies made in Washington, including farm,  
12      antitrust, and trade policies.

13          (16) To restore competition in the agricultural  
14      economy, and to increase the bargaining power and  
15      enhance economic prospects for family-based farm-  
16      ers, the trend toward concentration must be re-  
17      versed.

18   **SEC. 3. DEFINITIONS.**

19       In this Act:

20          (1) **BROKER.**—The term “broker” means any  
21      person engaged in the business of negotiating sales  
22      and purchases of any agricultural commodity in  
23      interstate or foreign commerce for or on behalf of  
24      the vendor or the purchaser, except that no person  
25      shall be considered a broker if the only sales of such

1 commodities are for a value less than \$10,000,000  
2 per year.

3 (2) COMMISSION MERCHANT.—The term “com-  
4 mission merchant” means any person engaged in the  
5 business of receiving in interstate or foreign com-  
6 merce any agricultural commodity for sale, on com-  
7 mission, or for or on behalf of another, except that  
8 no person shall be considered a commission mer-  
9 chant if the only sales of such commodities are for  
10 a value less than \$10,000,000 per year.

11 (3) DEALER.—The term “dealer” means any  
12 person (excluding agricultural cooperatives) engaged  
13 in the business of buying, selling, or marketing agri-  
14 cultural commodities in interstate or foreign com-  
15 merce, except that—

16 (A) no person shall be considered a dealer  
17 with respect to sales or marketing of any agri-  
18 cultural commodity of that person’s own rais-  
19 ing; and

20 (B) no person shall be considered a dealer  
21 if the only sales of such commodities are for a  
22 value less than \$10,000,000 per year.

23 (4) AGRICULTURAL INPUT SUPPLIER.—The  
24 term “agricultural input supplier” means any person  
25 engaged in the business of selling, in interstate or

1 foreign commerce, any product to be used as an  
 2 input (including seed, germ plasm, hormones, anti-  
 3 biotics, fertilizer, and chemicals, but excluding farm  
 4 machinery) for the production of any agricultural  
 5 commodity, except that no person shall be consid-  
 6 ered an agricultural input supplier if sales of such  
 7 products are for a value less than \$10,000,000 per  
 8 year.

9 (5) PROCESSOR.—The term “processor” means  
 10 any person (excluding agricultural cooperatives) en-  
 11 gaged in the business of handling, preparing, or  
 12 manufacturing (including slaughtering) of an agri-  
 13 cultural commodity, or the products of such agricul-  
 14 tural commodity, for sale or marketing for human  
 15 consumption, except that no person shall be consid-  
 16 ered a processor if the only sales of such products  
 17 are for a value less than \$10,000,000 per year.

18 **TITLE I—MORATORIUM ON**  
 19 **LARGE AGRIBUSINESS MERG-**  
 20 **ERS**

21 **SEC. 101. MORATORIUM ON LARGE AGRIBUSINESS MERG-**  
 22 **ERS.**

23 (a) IN GENERAL.—

1           (1) MORATORIUM.—Until the date referred to  
2           in paragraph (2) and except as provided in sub-  
3           section (b)—

4                   (A) no dealer, processor, commission mer-  
5                   chant, agricultural input supplier, broker, or  
6                   operator of a warehouse of agricultural com-  
7                   modities with annual net sales or total assets of  
8                   more than \$100,000,000 shall merge or ac-  
9                   quire, directly or indirectly, any voting securi-  
10                  ties or assets of any other dealer, processor,  
11                  commission merchant, agricultural input sup-  
12                  plier, broker, or operator of a warehouse of ag-  
13                  ricultural commodities with annual net sales or  
14                  total assets of more than \$10,000,000; and

15                  (B) no dealer, processor, commission mer-  
16                  chant, agricultural input supplier, broker, or  
17                  operator of a warehouse of agricultural com-  
18                  modities with annual net sales or total assets of  
19                  more than \$10,000,000 shall merge or acquire,  
20                  directly or indirectly, any voting securities or  
21                  assets of any other dealer, processor, commis-  
22                  sion merchant, agricultural input supplier,  
23                  broker, or operator of a warehouse of agricul-  
24                  tural commodities with annual net sales or total



1 assets of more than \$100,000,000 if the acquir-  
2 ing person would hold—

3 (i) 15 percent or more of the voting  
4 securities or assets of the acquired person;  
5 or

6 (ii) an aggregate total amount of the  
7 voting securities and assets of the acquired  
8 person in excess of \$15,000,000.

9 (2) DATE.—The date referred to in this para-  
10 graph is the earlier of—

11 (A) the effective date of comprehensive  
12 legislation—

13 (i) addressing the problem of market  
14 concentration in the agricultural sector;  
15 and

16 (ii) containing a section stating that  
17 the legislation is comprehensive legislation  
18 as provided in section 101 of the Agri-  
19 business Merger Moratorium and Antitrust  
20 Review Act of 1999; or

21 (B) the date that is 18 months after the  
22 date of enactment of this Act.

23 (b) WAIVER AUTHORITY.—The Attorney General  
24 shall have authority to waive the moratorium imposed by  
25 subsection (a) only under extraordinary circumstances,

1 such as insolvency or similar financial distress of 1 of the  
2 affected parties.

## 3 **TITLE II—AGRICULTURE CON-** 4 **CENTRATION AND MARKET** 5 **POWER REVIEW COMMISSION**

### 6 **SEC. 201. ESTABLISHMENT OF COMMISSION.**

7 (a) ESTABLISHMENT.—There is established a com-  
8 mission to be known as the Agriculture Concentration and  
9 Market Power Review Commission (hereafter in this title  
10 referred to as the “Commission”).

11 (b) PURPOSES.—The purpose of the Commission is  
12 to—

13 (1) study the nature and consequences of con-  
14 centration in America’s agricultural economy; and

15 (2) make recommendations on how to change  
16 underlying antitrust laws and other Federal laws  
17 and regulations to keep a fair and competitive agri-  
18 culture marketplace for family farmers, other small  
19 and medium sized agriculture producers, generally,  
20 and the communities of which they are a part.

21 (c) MEMBERSHIP OF COMMISSION.—

22 (1) COMPOSITION.—The Commission shall be  
23 composed of 12 members as follows:

24 (A) Three persons, one of whom shall be a  
25 person currently engaged in farming or ranch-

1           ing, shall be appointed by the President pro  
2           tempore of the Senate upon the recommenda-  
3           tion of the Majority Leader of the Senate, after  
4           consultation with the Chairman of the Com-  
5           mittee on Agriculture, Nutrition, and Forestry.

6           (B) Three persons, one of whom shall be  
7           a person currently engaged in farming or  
8           ranching, shall be appointed by the President  
9           pro tempore of the Senate upon the rec-  
10          ommendation of the Minority Leader of the  
11          Senate, after consultation with the ranking mi-  
12          nority member of the Committee on Agri-  
13          culture, Nutrition, and Forestry.

14          (C) Three persons, one of whom shall be a  
15          person currently engaged in farming or ranch-  
16          ing, shall be appointed by the Speaker of the  
17          House of Representatives, after consultation  
18          with the Chairman of the Committee on Agri-  
19          culture.

20          (D) Three persons, one of whom shall be  
21          a person currently engaged in farming or  
22          ranching, shall be appointed by the Minority  
23          Leader of the House of Representatives, after  
24          consultation with the ranking minority member  
25          of the Committee on Agriculture.

1 (2) QUALIFICATIONS OF MEMBERS.—

2 (A) APPOINTMENTS.—Persons who are ap-  
3 pointed under paragraph (1) shall be persons  
4 who—

5 (i) have experience in farming or  
6 ranching, expertise in agricultural econom-  
7 ics and antitrust, or have other pertinent  
8 qualifications or experience relating to ag-  
9 riculture and agriculture industries; and

10 (ii) are not officers or employees of  
11 the United States.

12 (B) OTHER CONSIDERATION.—In appoint-  
13 ing Commission members, every effort shall be  
14 made to ensure that the members—

15 (i) are representative of a broad cross  
16 sector of agriculture and antitrust perspec-  
17 tives within the United States; and

18 (ii) provide fresh insights to analyzing  
19 the causes and impacts of concentration in  
20 agriculture industries and sectors.

21 (d) PERIOD OF APPOINTMENT; VACANCIES.—

22 (1) IN GENERAL.—Members shall be appointed  
23 not later than 60 days after the date of enactment  
24 of this Act and the appointment shall be for the life  
25 of the Commission.

1           (2) VACANCIES.—Any vacancy in the Commis-  
 2           sion shall not affect its powers, but shall be filled in  
 3           the same manner as the original appointment.

4           (e) INITIAL MEETING.—Not later than 30 days after  
 5           the date on which all members of the Commission have  
 6           been appointed, the Commission shall hold its first meet-  
 7           ing.

8           (f) MEETINGS.—The Commission shall meet at the  
 9           call of the Chairperson.

10          (g) CHAIRPERSON AND VICE CHAIRPERSON.—The  
 11          members of the Commission shall elect a chairperson and  
 12          vice chairperson from among the members of the Commis-  
 13          sion.

14          (h) QUORUM.—A majority of the members of the  
 15          Commission shall constitute a quorum for the transaction  
 16          of business.

17          (i) VOTING.—Each member of the Commission shall  
 18          be entitled to 1 vote, which shall be equal to the vote of  
 19          every other member of the Commission.

20       **SEC. 202. DUTIES OF THE COMMISSION.**

21          (a) IN GENERAL.—The Commission shall be respon-  
 22          sible for examining the nature, the causes, and con-  
 23          sequences concentration in America’s agricultural econ-  
 24          omy in the broadest possible terms.

1 (b) ISSUES TO BE ADDRESSED.—The study shall in-  
2 clude an examination of the following matters:

3 (1) The nature and extent of concentration in  
4 the agricultural sector, including food production,  
5 transportation, processing, distribution and mar-  
6 keting, and farm inputs such as machinery, fer-  
7 tilizer, and seeds.

8 (2) Current trends in concentration of the agri-  
9 cultural sector and what this sector is likely to look  
10 like in the near and longer term future.

11 (3) The effect of this concentration on farmer  
12 income.

13 (4) The impacts of this concentration upon  
14 rural communities, rural economic development, and  
15 the natural environment.

16 (5) The impacts of this concentration upon food  
17 shoppers, including the reasons that Depression-level  
18 farm prices have not resulted in corresponding drops  
19 in supermarket prices.

20 (6) The productivity of family-based farm units,  
21 compared with corporate based agriculture, and  
22 whether farming is approaching a scale that is larg-  
23 er than necessary from the standpoint of produc-  
24 tivity.

1           (7) The effect of current laws and administra-  
2           tive practices in supporting and encouraging this  
3           concentration.

4           (8) Whether the existing antitrust laws provide  
5           adequate safeguards against, and remedies for, the  
6           impacts of concentration upon family-based agri-  
7           culture, the communities they comprise, and the  
8           food shoppers of this Nation.

9           (9) Accurate and reliable data on the national  
10          and international markets shares of multinational  
11          agribusinesses, and the portion of their sales attrib-  
12          utable to exports.

13          (10) Barriers that inhibit entry of new competi-  
14          tors into markets for the processing of agricultural  
15          commodities, such as the meat packing industry.

16          (11) The extent to which developments, such as  
17          formula pricing, marketing agreements, and forward  
18          contracting tend to give processors, agribusinesses,  
19          and other buyers of agricultural commodities addi-  
20          tional market power over producers and suppliers in  
21          local markets.

22          (12) Such related matters as the Commission  
23          determines to be important.

1 **SEC. 203. FINAL REPORT.**

2 (a) IN GENERAL.—Not later than 12 months after  
3 the date of the initial meeting of the Commission, the  
4 Commission shall submit to the President and Congress  
5 a final report which contains—

6 (1) the findings and conclusions of the Commis-  
7 sion described in section 202; and

8 (2) recommendations for addressing the prob-  
9 lems identified as part of the Commission’s analysis.

10 (b) SEPARATE VIEWS.—Any member of the Commis-  
11 sion may submit additional findings and recommendations  
12 as part of the final report.

13 **SEC. 204. POWERS OF COMMISSION.**

14 (a) HEARINGS.—The Commission may hold such  
15 hearings, sit and act at such times and places, take such  
16 testimony, and receive such evidence as the Commission  
17 may find advisable to fulfill the requirements of this title.  
18 The Commission shall hold at least 1 or more hearings  
19 in Washington, D.C., and 4 in different agriculture re-  
20 gions of the United States.

21 (b) INFORMATION FROM FEDERAL AGENCIES.—The  
22 Commission may secure directly from any Federal depart-  
23 ment or agency such information as the Commission con-  
24 siders necessary to carry out the provisions of this title.  
25 Upon request of the Chairperson of the Commission, the



1 head of such department or agency shall furnish such in-  
2 formation to the Commission.

3 (c) POSTAL SERVICES.—The Commission may use  
4 the United States mails in the same manner and under  
5 the same conditions as other departments and agencies of  
6 the Federal Government.

7 **SEC. 205. COMMISSION PERSONNEL MATTERS.**

8 (a) COMPENSATION OF MEMBERS.—Each member of  
9 the Commission shall be compensated at a rate equal to  
10 the daily equivalent of the annual rate of basic pay pre-  
11 scribed for level IV of the Executive Schedule under sec-  
12 tion 5315 of title 5, United States Code, for each day (in-  
13 cluding travel time) during which such member is engaged  
14 in the performance of the duties of the Commission.

15 (b) TRAVEL EXPENSES.—The members of the Com-  
16 mission shall be allowed travel expenses, including per  
17 diem in lieu of subsistence, at rates authorized for employ-  
18 ees of agencies under subchapter I of chapter 57 of title  
19 5, United States Code, while away from their homes or  
20 regular places of business in the performance of services  
21 for the Commission.

22 (c) STAFF.—

23 (1) IN GENERAL.—The Chairperson of the  
24 Commission may, without regard to the civil service  
25 laws and regulations, appoint and terminate an exec-

1       utive director and such other additional personnel as  
2       may be necessary to enable the Commission to per-  
3       form its duties. The employment of an executive di-  
4       rector shall be subject to confirmation by the Com-  
5       mission.

6           (2) COMPENSATION.—The Chairperson of the  
7       Commission may fix the compensation of the execu-  
8       tive director and other personnel without regard to  
9       the provisions of chapter 51 and subchapter III of  
10      chapter 53 of title 5, United States Code, relating  
11      to classification of positions and General Schedule  
12      pay rates, except that the rate of pay for the execu-  
13      tive director and other personnel may not exceed the  
14      rate payable for level V of the Executive Schedule  
15      under section 5316 of such title.

16      (d) DETAIL OF GOVERNMENT EMPLOYEES.—Any  
17      Federal Government employee shall be detailed to the  
18      Commission without reimbursement, and such detail shall  
19      be without interruption or loss of civil service status or  
20      privilege.

21      (e) PROCUREMENT OF TEMPORARY AND INTERMIT-  
22      TENT SERVICES.—The Chairperson of the Commission  
23      may procure temporary and intermittent services under  
24      section 3109(b) of title 5, United States Code, at rates  
25      for individuals which do not exceed the daily equivalent

1 of the annual rate of basic pay prescribed for level V of  
2 the Executive Schedule under section 5316 of such title.

3 **SEC. 206. SUPPORT SERVICES.**

4 The Administrator of the General Services Adminis-  
5 tration shall provide to the Commission on a reimbursable  
6 basis such administrative support services as the Commis-  
7 sion may request.

8 **SEC. 207. AUTHORIZATION OF APPROPRIATIONS.**

9 There are authorized to be appropriated \$2,000,000  
10 to the Commission as required by this title to carry out  
11 the provisions of this title.

